IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3717 of 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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G S R T C - Petitioner(s)

Versus

SMT. CHAMPABEN W/O SHANTILAL M. SHAH - Respondent(s)

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Appearance :

MR ASHISH M DAGLI for Petitioner(s) : 1,
None for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 1.2.1
MR SUDHIR M MEHTA for Respondent(s) : 1.2.1

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 14/09/2005

ORAL JUDGMENT

1.In the present petition, the petitioner State Road Transport Corporation has challenged the legality of an Award dated 25.01.1985, passed by the Labour Court, Vadodara. By the impugned Award, the Labour Court was

pleased to set aside the punishment of dismissing the workman from service, which order was passed by the petitioner Corporation on 31.07.1975. The workman was ordered to be reinstated in service with continuity without backwages.

2. On the allegations that the workman Shantilal Motilal Shah had committed rape on the fateful night of 8th February 1975 on the wife of a co-employee, a departmental inquiry came to be conducted against him. Eventually, by an Order dated 31.07.1975, he was dismissed from service. The workman challenged his dismissal by raising an industrial dispute, which was referred for adjudication before the Labour Court, Vadodara as Ref(LCV)No. 1219/77.

3. The Labour Court, finding that the inquiry conducted against the workman was defective, permitted the petitioner to lead fresh evidence before the Labour Court. The petitioner before the Labour Court examined the lady who had complained of rape. The Labour Court however considering her evidence, came to the conclusion that the version of the lady is not believable. To come to the above conclusion, the Labour Court discussed at length the evidence of the

concerned lady. It may be noted that as per the allegations, the petitioner-workman had committed rape on 8th February 1975. For the first time, a written complaint came to be filed by the husband of the lady on 10th March 1975 before the S.T. Authorities. It may also be noted that no police complaint was ever filed in this regard.

3.1The Labour Court observed that according to the lady, when she shouted for help, 15 to 20 persons from the neighbourhood had gathered. None of these persons were examined before the Court. One Shri Mohanbhai was examined during the course of the inquiry. However, his version is substantially different from that of the lady. The Labour Court also observed that in absence of a police complaint and on account of the complaint being made belatedly, there is no medical evidence available. The Labour Court also noted major contradictions in the version of the lady that the workman had threatened the lady with the knife, was not consistent. The Labour Court also noted contradictions regarding the cloths that the lady was wearing. The Labour Court also observed that according to her own version, in the same room her two children were sleeping. The Labour Court also found it difficult to

believe that in the middle of night, persons in the neighbourhood could have recognised the workman. The Labour Court also noted that the subsequent conduct of the lady was also not consistent with the allegations of rape. It was observed that the alleged incident was stated to have taken place on 08.02.1975. The workman seems to have visited the house of the lady alongwith other persons. Even after that incident, he was served tea. The Labour Court observed that if the allegations were correct, the lady would not have behaved in such a fashion and cooperated with the workman subsequently.

3.2On all these aspects of the matter, the Labour Court came to the conclusion that the charges were not proved against the workman.

4.From the above discussion of the material on record and the observations of the Labour Court, it can be seen that the conclusions arrived at by the Labour Court are purely those of factual nature. Considering the evidence on record, the Labour Court has come to certain factual conclusions. It is not possible to hold that such conclusions are perverse as not borne out from any evidence at all. The view of the Labour Court is entirely believable. When from the material on

record, the Labour Court found it difficult to accept the version of rape in absence of any such factual findings, it is not possible for this Court to interfere with the impugned Award.

4.1As noted earlier, the alleged incident took place on 8th February 1975. For more than a month, no compliant was made about the same. No police complaint ever came to be filed. Before the Labour Court, no other witnesses were examined who had allegedly collected at the scene of the incident upon shouts from the lady. The Labour Court found that there were major contradictions in the version of the lady also. Her subsequent conduct also was not in tune with the allegations she made. On all counts, the Labour Court found that the allegations cannot be sustained.

5.In the decision of **Madurantakam Co.op Sugar Mills Ltd. Vs. S.Vishwanathan reported in 2005(3) SCC 193**, the Hon'ble Supreme Court has made following observations :

> **“12. Normally the Labour Court or the Industrial Tribunal, as the case may be, is the final court of facts in these types of disputes, but if the finding of the fact is perverse or if the same is not based on legal evidence the High Court exercising a power either under Article 226 or under Article 227 of the Constitution can go into the question of fact decided by the Labour Court or the Tribunal. But before going into**

such an exercise it is necessary that the writ court must record reasons why it intends reconsidering a finding of fact. In the absence of any such defect in the order of the Labour Court the writ court will not enter into the realm of factual disputes and finding given thereon. A consideration of the impugned order of the learned Single Judge shows that nowhere has he come to the conclusion that the finding of the Labour Court was either perverse or based on no evidence or based on evidence which is not legally acceptable. Learned Single Judge proceeded as if he was sitting in a court of appeal on facts and item after item of evidence recorded in the domestic enquiry as well as before the Labour Court was reconsidered and findings given by the Labour Court were reversed. We find no justification for such an approach by the learned Single Judge which only amounts to substitution of his subjective satisfaction in the place of such satisfaction of the Labour Court."

6.In view of the above discussion, I find that the Award of the Labour Court calls for no interference. The petition is therefore rejected. Rule discharged. No order as to costs.

(Akil Kureshi, J.)

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